

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

-

WRIT PETITION NO : 11384 of 2005

Between:

P. Upender, S/o. S. Lakshmaiah,
R/o. Thorrur Village and Mandal, Warangal District.

..... PETITIONER

AND

- 1 The Joint Collector, Warangal District, Warangal.
- 2 The Revenue Divisional Officer, R.D.O's Office,
Mahaboobabad, Warangal District.
- 3 The Mandal Revenue Officer, Thorrur Mandal,
Thorrur, Warangal District.
- 4 D.Venkata Rama Rao, S/o.Late Hanumantha Rao,
R/o.Thorrur Village & Mandal, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus, declaring the order Dt.16-4-2005 in Rc.No.E5/2905/2004, of the Joint Collector, Warangal confirming the order of the R.D.O., Mahaboobabad dt.5-5-2004 in No.I/2325/2001 is arbitrary, illegal, and violative of Article 14,19 and 21 of constitution of India consequently declare that the regularization order passed in favour of petitioner is valid and the petitioner is the lawful owner of land in Question extent of 28 Guntas in Survey No.279 of Thorrur village and Mandal of Warangal District and pass such other order or orders.

Counsel for the Petitioner: MR.C.YADAGIRI

Counsel for the Respondent No.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: MR.VENUGOPAL

The Court made the following :

ORDER :

1. This Writ Petition is filed with a prayer to issue a Writ of Mandamus declaring the order dated 16-4-2005 in Rc.No.E5/2905/2004 of Joint Collector, Warangal confirming the order of the Revenue Divisional Officer, Mahaboobabad passed in Proceedings No.1/2325/2001, dated 5.3.2004 as arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution of India.

2. The case of the petitioner as set out in his affidavit filed in support of the Writ Petition is :

One Durgaraju Venkata Rama Rao-4th respondent is the owner of Survey No.279 of Thorrur Village, Warangal District. The petitioner purchased an extent of 18 and 10 guntas of land in Sy.No.279 from the 4th respondent under simple sale deeds dated 15-8-1987 and 20-10-1988 respectively. The petitioner applied for regularization of alienation before the Mandal Revenue Officer, Thorrur-3rd respondent under the provisions of A.P. Rights in Land and Pattedar Pass Book Act, 1977, who directed

him to deposit the amount equal to the registration fee and stamp duty that would have been payable had the alienation been effected under registered documents. The petitioner deposited the required amount before the 3rd respondent and thereupon the 3rd respondent issued notice to the vendor/4th respondent on 9.1.1999 directing him to appear before him on 25.1.1999 to state objections, if any. 4th respondent appeared before the 3rd respondent on 21.5.1999 and gave his statement reporting "No Objection" for entering the name of the petitioner in the revenue records. The 3rd respondent caused the enquiry as per Rule 22 (5) of A.P.Rights in Land and Pattedar Pass Books Rules, 1989 and issued pattedar pass book and title deed in favour of the petitioner in respect of 10 and 18 guntas of land in S.No.279. K.Ranga Rao, the Village Administrative Officer collected the pass book and title deed from the petitioner on the ground that the same are required for 'Jamabandhi'. The said K.Ranga Rao who is a close relative of 4th respondent made corrections in the passbook and title deed in respect of extent of land in S.No.279. On noticing the corrections the petitioner demanded 4th respondent for issuance of the copies of Pahani patrikas relating to 18 guntas comprising S.No.279. The said K.Ranga Rao demanded bribe of Rs.5,000/- for issuance of Pahani patrikas and thereupon the petitioner approached the Anti Corruption Bureau officials who caught the said K.Ranga Rao red handed. The petitioner made representations to the 3rd respondent for rectification of entries in the pass book and title deed, who enquired into the matter and reported to the Revenue Divisional Officer. On receipt of report of the 3rd respondent, the Revenue Divisional Officer,

Mahabubabad, caused enquiry and found the contentions of the petitioner to be true and thereby directed the 3rd respondent to rectify the entries. The 4th respondent made representation to the Revenue Divisional Officer questioning the rectification of entries in the pass book and title deed. The Revenue Divisional Officer took the representation as an appeal without taking note of relevant provisions under which an appeal should be filed within 30 days and the appeal petition should bear necessary court fee stamp of Rs.5/-. The 4th respondent filed O.S.9 of 2003 on the file of Senior Civil Judge, Mahabubabad for permanent injunction and he also moved I.A.No.29 of 2003 for temporary injunction. But 4th respondent was unsuccessful in securing interim injunction in the said suit. The 2nd respondent-RDO took the representation of the 4th respondent as an appeal contrary to the provisions of A.P.Rights in Land and Pattadar Pass Books Act, 1971 (for short Act, 1971), since the appeal petition is bared by limitation and there being no application to condone the delay infilling the appeal. The 2nd respondent-Revenue Divisional Officer allowed the appeal basing on some presumptions and assumptions. The petitioner carried the matter in revision to the Joint Collector under section 9 of the Act, 1971. The 1st respondent-Joint Collector without considering the material brought on record in right perspective dismissed the revision by an order dated 16.4.2005. Thus, the order of 2nd respondent and the order of 1st respondent are not legal, proper and violative of Articles 14, 19 and 21 of the Constitution of India and they are liable to be quashed.

3. The 4th respondent filed counter affidavit resisting the claim of the petition. The sum and substance of the counter of 4th respondent is :

He is the absolute owner and possessor of land in S.No.279 of Thorrur village. He did not execute simple sale deeds dated 15.8.1987 and 20-10-1988. The petitioner fabricated the said documents and got his name incorporated in revenue records and that on coming to know of the same, he filed an application before the 2nd respondent and thereupon the 2nd respondent after verifying the records recorded a finding that the petitioner got his name incorporated in the revenue records without issuing notice to the effected party as contemplated under Section 5(3) of the Act, 1971. A further finding has been recorded by the 2nd respondent that the petitioner got his name entered in the revenue records basing on forged and fabricated documents and thereby proceedings issued by 3rd respondent with regard to correction of entries in pattadar pass book has been cancelled. The petitioner unsuccessfully filed the revision assailing the order of 2nd respondent. Since the land in question ceased to be an agricultural land, pattadar passbook and title deed cannot be issued under the provisions of the Act, 1971.

4. Rule has been issued on 17-5-2005. When WPMP.No.14570 of 2005 seeking for suspension of the operation of the order dated 16.4.2005 in Proc.No.Rc.No.E5/2905/2004 confirming the orders of the RDO, Mahabubabad dt.5.3.2004 in Proc.No.1/2325/2001 came up for hearing, both the parties have

consented for disposal of the writ petition itself and therefore the writ petition itself is taken up for hearing and is being disposed of by the order.

5. Learned counsel appearing for the petitioner submits that the 2nd respondent has not conducted any enquiry before setting aside the orders of 3rd respondent and therefore the order of 2nd respondent suffers from serious infirmity. He also submits that the appeal filed before the 2nd respondent is beyond the period of limitation and thus the 2nd respondent ought not to have taken the appeal filed by 4th respondent on file and the appeal should have been dismissed in limine. He would further contend that the original entries in the revenue records in favour of the petitioner were made much prior to 2002 and since 4th respondent did not choose to challenge those proceedings, he was not entitled to question the proceedings passed by 3rd respondent with regard to correction of entries in the pattadar passbook and title deed. His further submission is that since 4th respondent has already initiated proceedings in a civil court by filing a suit against the petitioner, the 1st and 2nd respondent ought not to have proceeded further pending adjudication of the dispute in civil court. He would further contend that the Village Administrative Officer who happened to be a close relative of 4th respondent played mischief in altering the entries in the pass book and title deed and the mischief played by the VAO has been set right by MRO on the representation of the petitioner and therefore the action of the MRO cannot be found fault. His further submission would be that the orders

passed by MRO in rectifying the entries in the pass book and title deeds standing in the name of the petitioner is legal and proper and it is not warranted to be interfered either by RDO or by the Joint Collector in exercise of either appeal powers or revisional powers. In support of his submissions, he placed reliance on the decisions of our High Court in V.GOUTHAM RAO v. REVENUE DIVISIONAL OFFICER, JAGTIAL, KARIMNAGAR and SANNEPALLI NAGESWAR RAO V. DISTRICT COLLECTOR, KHAMMAM. In the first cited decision it has been held that when the suit of comprehensive nature is pending in civil court, initiation of proceedings under the Act, 1971 is not proper, since it is a civil court that has a final say in the matter. In the second cited decision a Division Bench of our High Court while considering the provisions of Sec.5 (5) of the Act, 1971 and on the facts of that case held that 4th respondent therein had approached the authority who has no jurisdiction wherein certain orders were passed which were held to be not maintainable under the provisions of the Act, 1971 apart from being violative of the principles of natural justice. Necessarily, it follows that where a special statute prescribes regular remedies before the hierarchy of authorities, a person aggrieved has to take recourse only to such forum and method and manner in which it is prescribed under the said law.

6. Learned counsel appearing for the 4th respondent submits that the petitioner got his name entered in the revenue records by playing fraud and since no order can be

allowed to stand if obtained by fraud, the 1st and 2nd respondents are justified in setting aside the order of 3rd respondent and therefore the orders of 1st respondent and 2nd respondent did not suffer from incurable legal infirmities for exercising extraordinary discretionary jurisdiction of this court under Article 226 of the Constitution of India. His further submission is that the very foundation on which the petitioner is said to have obtained the pass book and title deed in his favour is not legal since it is based on the documents said to have been executed by 4th respondent which at the most amount to agreement of sale, which cannot be considered as transfer within the meaning of Sec.5 of the Act, 1971. In support of his submissions reliance has been placed on the decisions of our High Court in POCHI REDDY V. R.D.O., VIKARABAD and K.R.GOUD v. BHAVANARISHI CO-OP., HOUSE BUILDING SOCIETY. In the third cited decision, it has been held that validation of unregistered sale deeds from MRO by playing fraud is nonest in law and no order can be allowed to stand if obtained by fraud. In the fourth cited decision, it has been held that an agreement of sale cannot be considered as transfer within the meaning of Sec.5-A. Much emphasis has been laid on paras 63 and 64 of the fourth cited decision by counsel for 4th respondent and they read as under:

“ 63. Thus, on the basis of the two documents, the only right which the Society got was a right to seek specific performance of agreements to sell and not any right, title or interest in the land. Assuming a suit was also filed and decree of specific performance was obtained, such a decree for specific performance of contract will not have the effect of conveying right, title and interest in favour of the Society till a deed of sale is duly executed and registered. In BABU LAL V. M/s HAZARI LAL KISHORI LAL (AIR 1982 SC 818) the Supreme Court held that neither a contract for sale nor a decree passed on that

basis for specific performance of the contract gives any right or title to the decree holder. The right and the title passes to the decree holder only on the execution of the deed of sale either by the judgment debtor himself or by the Court in case the judgment-debtor fails to execute the sale deed.

64. Even in those cases where pursuant to agreement of sale the transferee takes possession of the land in part performance of the agreement of sale as is the case of petitioner society, such an act also does not confer any title in the landing favour of the transferee. We need not make reference to numerous decisions of the Apex Court in respect of this settled position except by making reference to the decision in PATEL NATWARLAL RUPJI V. KONDH GROUP KHETI VISHAYAK ((1996) 7 SCC 690.”

7. The petitioner is said to have initiated proceedings under the Act, 1971 basing on two simple sale deeds allegedly executed by 4th respondent on 15.8.1987 and 20-10-1988. According to the petitioner, the Mandal Revenue Officer after due enquiry issued pattadar pass book and title deed in respect of 10 and 18 guntas comprising S.No.279. It is the grievance of the petitioner that the Village Administrative Officer who is closely related to 4th respondent made certain corrections with regard to extent of land in the pattadar pass book and therefore he submitted an application before the Mandal Revenue Officer for restoration of entries. The Mandal Revenue Officer after due enquiry ordered for restoration of entries in pattadar pass book. Whereas 4th respondent submitted a representation before the Revenue Divisional officer on 20.9.2002 questioning the very grant of pattadar passbook and title deed. Thereupon, the Revenue Divisional officer perused Pahani patrikas for the years 1999-2000 and 2000 and 2001 issued by the Village Administrative Officer duly attested by the Mandal Revenue Officer and ordered for restoration of the entries in the revenue record pending disposal of the petitions filed by the petitioner as well as 4th respondent. I deem it appropriate to refer the relevant portion of the order dated

26-11-2002 passed by the Revenue Divisional Officer and it is thus:

“ Sri.Panjala Upender, s/o Laxmaiah, R/o Thorrur village has filed a representation stating that he has purchased land twice from Sri.D.Venkatrama Rao, R/o Thorrur village to an extent of (0-18) and (0-10) guntas out of Sy.No.279 got ordinary sale documents and produced before the Mandal Revenue Officer, Thorrur and regularized the same and obtained ROR Pass Book bearing No.201411. He has also obtained copies of Pahani for the year 1999-2000 and 2000-2001. He further stated that the village secretary of Thorrur Village has taken back the pass book and title deed stating that those books are required during Jamabandi for the year, 1999-2000 for implementation in the Revenue Records. He alleged that Sri.K.Ranga Rao, Village Administrative Officer has returned back the Pattedar Pass Books duly striking the entry to an extent of 0-18 guntas without any valid order and requested to rectify the entry.

On perusal of record produced by the petitioner, i.e., copy of Pahani for the year 1999-2000 and 2000-2001 issued by the Village Administrative Officer duly attested by the Mandal Revenue Officer shows that the petitioner is the occupant to an extent of 0.28 guntas and the PPB issued by the Mandal Revenue Officer is also reflects the same and the certified copies of the pahanies issued by the Mandal Revenue Officer for the same period seems to be tampered.

In view of the foregoing facts it is evident that the Village Administrative Officer has corrected the entries made in the Pattedar Pass Book or Pahani without any valid order for which he is not competent.

In view of the pending disposal of the petition filed by Sri.D.Venkatrama Rao and Panjala Upender the entries made in the PPB have to be restored as per Form-13(b) and (c). Hence, the Mandal Revenue Officer, Thorrur is directed to correct the entries and submit compliance.”

8. Aggrieved by the order of the Revenue Divisional Officer, 4th respondent filed a revision before the Collector and also W.P.No.6445 of 2003. The writ petition filed by the 4th respondent came to be disposed of on 14.4.2003 directing the revisional authorities to examine the records and disposed of the revision petition

expeditiously preferably within three months. The revisional authority, on considering the material brought on record, opined that the revision petition against the interim orders passed by the Revenue Divisional Officer is not maintainable and thereby directed the Revenue Divisional Officer to dispose of the petition within two months. In compliance of the orders of the Joint Collector, the Revenue Divisional Officer, on due enquiry and on hearing both the parties, noticed the following irregularities:

1. Prescribed procedure was not followed by the Mandal Revenue Officer, Thorrur in validating the sale deeds under R.O.R. Act. It is astounding to note that no paper of the R.O.R file in this case bears file No., and there is tampering of the extents on every paper. For example (0-10) acres is made (0-18) acres, and (0-10) acres is shown subsequently. This gives scope to understand that an organized tampering had taken place.
2. The entire R.O.R file (Xerox copy) of Sy.No.279 bears (0-18) acres, and (0-10) acres only (though tampered), whereas the Xerox copies of the XIII B, and XIII C certificates contain Sy.Nos.268/B, 308/A, and 279. The report of the M.R.O. that there was not any mutation file maintained in the office with regard to (0-18) acres in Sy.No.279 corroborates to conclude that tampering was done on large scale to the benefit of the individuals. The deposition of Ex-V.A.O., Sri.K.Ranga Rao, Executive Engineer-V.A.O., Thorrur also supports this argument.
3. The sale deed dated 15.8.1987 alleged to have been executed by Sri.D.Venkatrama Rao in favour of Sri Panjala Upender to an extent of (0-18) acres in Sy.No.279 contains certain corrections in the extent. The inability of Sri.P.Upender to produce the original sale deed, and the denial of execution of such deed by Sri Venkatrama Rao tilts the balance in favour of Sri Venkat Rama Rao.
4. As per section 5(3) of the R.O.R. Act, it is mandatory to issue notice to the parties concerned while mutating the lands under sections 5(A) of the R.O.R.Act. But in this case, no notice was issued to the Pattadar, and he is deprived of an opportunity of hearing, which is irregular.
5. A separate file has to be build up for every mutation, and mutation without any record holds no validity. But in the instant case, the Mandal Revenue Officer has reported that there was not any file maintained with regard to the mutation of sy.No.279(0-18) acres

was not done by the Mandal Revenue Office, Thorrur, and whatever papers/documents produced are forged and fabricated.

On noticing the above irregularities, the Revenue Divisional Officer proceeded to cancel the pattedar pass book issued in favour of the petitioner in respect of 18 guntas in S.No.279 with immediate effect and directed the Mandal Revenue Officer, Thorrur to take action in proceedings No.1/23245/2001. Assailing the order of the Revenue Divisional Officer, the petitioner filed revision before the Joint Collector-1st respondent. The 1st respondent considered the following three issues in the revision:

1. Whether the land in question can be dealt under Andhra Pradesh Rights in land and Pattedar Pass Books Act, 1971, or not?
2. Whether Revenue Court has jurisdiction to deal this dispute on the basis of the documents submitted by the petitioner or not?
3. Whether the R.D.O. order is correct or not?

The 1st respondent on considering the material on record and on hearing both the parties dismissed the revision filed by the petitioner with the following findings:

1. The land in question has been under use for non-agricultural

purpose by making into house plots, hence the provisions of Act, 1971 are not applicable;

2. The dispute between the parties based on simple sale deeds is a title dispute and the same is required to be examined by a civil court;

3. The Pattedar Pass Book issued by the Mandal Revenue Officer in favour of the petitioner is irregular and liable to be cancelled.

9. The appellate authority-RDO-2nd respondent and revisional authority-Joint Collector-1st respondent have categorically recorded a finding that the dispute between the petitioner and 4th respondent based on simple sale deeds is a dispute which requires to be settled by a civil court. Much argument has been advanced by learned counsel for the petitioner that 4th respondent appeared before the Mandal Revenue Officer and gave a statement confirming the execution of sale deeds in favour of the petitioner and thus issuance of pattedar pass book and title deed in favour of the petitioner by Mandal Revenue Officer cannot be found fault. I do not see any substance in his contentions since 4th respondent have come forward with a specific plea that he did not give any such statement before the Mandal Revenue Officer and indeed no notice was given to him in the proceedings with regard to validation of the sale deeds. The Revenue Divisional Officer, on thorough

examination of the records, recorded a finding that no notice was issued to the 4th respondent and thereby he was deprived of an opportunity of hearing. The said finding has been confirmed by the revisional authority-1st respondent. Since the appellate authority and revisional authority have recorded a concurrent finding with regard to the non-issuance of notice to 4th respondent in the proceedings initiated by the petitioner for validation of the simple sale deeds, it is impermissible for this court in exercise of extra- ordinary jurisdiction under Article 226 of the Constitution to interfere with such finding. It has come on record that 4th respondent has filed O.S.No.9 of 2003 on the file of Senior Civil Judge, Mahaboobabad. Such is the situation, the petitioner and 4th respondent are at liberty to establish their respective rights over the land in dispute in civil court. The orders passed by Revenue Divisional Officer and Joint Collector do not suffer from any legal flaw and they need no interference of this court in exercise of powers under Article 226 of the Constitution of India.

10. Accordingly, this Writ Petition is devoid of merits and the same is dismissed with costs.

Dated: 13-07-2005. (B.Seshasayana Reddy, J)

Tnb

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Joint Collector, Warangal District, Warangal.
2. The Revenue Divisional Officer, R.D.O's Office,
Mahaboobabad, Warangal District.
3. The Mandal Revenue Officer, Thorrur Mandal,
Thorrur, Warangal District.
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